

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

In the Matter of:

WRD: 40110

File Number: 15-41-0002-V

**Swisslane Farms, LLC
12877 84th Street
Alto, Michigan 49302**

CONSENT AGREEMENT

The Administrative Consent Agreement (Agreement) is entered into by and between Swisslane Farms, LLC (Swisslane) and the Michigan Department of Environmental Quality (DEQ), Water Resources Division (WRD), and shall become effective on the date this Agreement is signed by Swisslane and the WRD (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

RECITALS

By correspondence dated March 25, 2015, the WRD issued a Violation Notice (Notice) to Schutte Dairy Farm, LLC., and to Swisslane, as contractor for Schutte Dairy Farm, LLC., alleging violations of Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.30101 *et seq.*, and Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 *et seq.* The WRD alleged in the Notice that Swisslane dredged approximately 1,700 linear feet of an existing stream, the Colby/Livingston Drain, cleared forested wetland adjacent to the stream, and side cast dredge spoils (~2300 cubic yards) into the adjacent wetland (1.31 acres). In addition, the WRD alleged that Swisslane altered an additional 0.34-acre area of forested wetland by clearing trees and placing fill material to expand agriculture land located south of the Colby/Livingston Drain easement. The alleged activities (Alleged Unauthorized Activities) occurred primarily within the Colby/Livingston Drain easement right of way present on five privately owned properties at the apparent request of Schutte Dairy Farm, LLC, owner of one of the parcels. The property where the Alleged Unauthorized Activities occurred is located within Section 18, Bowne Township (T5N, R9W) Kent County, Michigan (Properties).

The WRD requested in the Notice that Swisslane halt the Alleged Unauthorized Activities and that the wetland area affected (1.65 acres) by the Alleged Unauthorized Activities be restored.

Swisslane and the WRD acknowledge that the Colby/Livingston Drain is a stream as defined by Part 301 regulated by the State of Michigan and that prior to the dredging and filling activities

there existed approximately 1.65 acres of wetlands on the Properties regulated by the State of Michigan under Part 303.

The WRD alleges that Swisslane, as contractor, conducted the unauthorized dredge and fill activities at the request of Schutte and performed the Alleged Unauthorized Activities without permits under Parts 301 and 303.

The WRD and Swisslane desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings.

This Agreement identifies the necessary action to be taken by Swisslane, and imposes certain conditions upon performance of these actions. Successful completion of the terms of this Agreement by Swisslane will, in the opinion of WRD, resolve the Notice as it relates to Swisslane.

NOW, THEREFORE, in considerations of the mutual covenants contained herein, Swisslane and DEQ agree as follows:

GENERAL PROVISIONS

1. **SETTLEMENT PENALTY PAYMENT:** Swisslane agrees to pay an administrative settlement amount of \$2,500.00 to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of the effective date of this Agreement. Payment is to be made by certified check payable to the "State of Michigan." To insure proper credit, the payment made pursuant to this Agreement must include Payment Identification: WRD40110. This payment shall be sent to Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing Michigan 48933.
2. **STIPULATED PENALTIES:** Swisslane shall pay stipulated penalties of one hundred dollars (\$100.00) per day for failure to comply with the provisions of Paragraph 1 of this Agreement. Upon receipt of a notice of any violation governed by this provision, Swisslane shall have a ten (10)-day right to cure the violation before the imposition of any penalty under this provision.

3. **STIPULATED PENALTY PAYMENT:** To ensure timely payments of any stipulated penalties provided in Paragraph 2 of this Agreement, Swisslane shall pay an interest penalty to the State of Michigan for failure to make a timely payment. This interest penalty shall be based upon a rate of 12 percent per year compounded annually, using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally paid in full. All payments associated with this Paragraph 3 shall be paid in the form of a cashier's check payable to the "State of Michigan", and sent to Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing, Michigan 48933.
4. **PENALTY PAYMENT DISPUTE:** Swisslane agrees not to contest the legal basis for the penalty assessed pursuant to Paragraph 1 of this Agreement. Swisslane also agrees not to contest the legal basis for any stipulated penalties assessed pursuant to Paragraph 2 of this Agreement but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by the WRD of stipulated fines is made. Swisslane and the WRD agree this does not preclude the possibility of informal resolution of disputed directly between Swisslane and the WRD.
5. **RESOLUTION OF WRD VIOLATION NOTICE:** Upon the successful completion of the terms of this Agreement, the WRD shall deem resolved the March 25, 2015 Notice and close WRD complaint number WRD 15-41-0002-V as it relates to Swisslane.
6. **FORCE MAJEURE:** Swisslane shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events, which constitute a "Force Majeure" event. For the purpose of this Agreement, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Swisslane, such as an "Act of God," untimely review of permit applications or submissions by the WRD or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by Swisslane's due diligence, and that delay the performance of an obligation under this Agreement. "Force Majeure" does not include, among other things unanticipated or increased costs, failure to secure funding, change in financial

circumstances or failure to obtain a permit or license as a result of Swisslane's actions or omissions.

7. **FORCE MAJEURE NOTICE:** Swisslane shall notify the WRD by telephone within 48 hours of discovering any event, which causes delay in their compliance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten calendar days, and shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Swisslane to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Swisslane to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.
8. **AGREEMENT AMENDMENTS:** This Agreement may be amended or revoked at any time by a written Agreement executed by all parties to this Agreement. No change or modification to the Agreement shall be valid unless in writing and signed by all parties to this Agreement.
9. **DISPUTE RESOLUTION:** Both Parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Agreement prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
10. **DENIAL OF LIABILITY:** Nothing contained in this Agreement shall be construed as an admission of liability or wrongdoing by Swisslane. The WRD and Swisslane agree that the signing of this Agreement is for settlement purposes only.
11. **AGREEMENT PROVISIONS:** The invalidity or unenforceability of any particular portion of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if invalid or unenforceable provisions were omitted.
12. **GOVERNING LAW:** This Agreement shall be executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
13. **TERMINATION OF AGREEMENT:** This Agreement shall terminate only upon written notice of termination issued by the WRD Chief. Prior to issuance of a written notice of

termination, Swisslane shall submit a request consisting of a written certification that Swisslane has full complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.

14. **ENTIRE AGREEMENT**: This Agreement constitutes the entire Agreement among the parties hereto and contains all of the Agreements among said parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date first above written. The undersigned certify that they are fully authorized by the party they represent, to enter into this Agreement and to legally bind that party to this Agreement.

Swisslane Farms, LLC

By: _____

Fredrick J. Oesch

Date: _____

1/12/16

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

By: _____

William Creal, Chief
Water Resources Division

Date: _____

1/26/2016

APPROVED AS TO FORM:

By: _____

Neil D. Gordon
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

Date: _____

1/15/16